APPENDIX A

Judgment Below

Filed and Entered, April 6, 1964

[Caption omitted]

Appeal from the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Washington and Burger, Circuit Judges.

THIS CAUSE came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed. See *Kennedy* v. *Rabinowitz*, 115 U.S. App. D.C. 210, 318 F. 2d 181 (1963), affirmed on other grounds, — U.S. — (March 30, 1964).

Per Curiam.

APPENDIX B

Constitutional Provisions, Statutes and Regulations Involved

1. Amendment V, Constitution of the United States, is as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

2. 18 U.S.C. 281, as amended is as follows:

"Section 281. Compensation to members of Congress, officers and others in matters affecting the government. —Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer, or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

"Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status.

"This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by Act of Congress." [June 25, 1948, c. 645, § 1, 62 Stat. 697; May 24, 1949, c. 139, § 6, 63 Stat. 90; repealed by Act Oct. 23, 1962, P.L. 87-849, § 2, 76 Stat. 1126, "except as [it] may apply to retired officers of the armed forces of the United States."] (18 U.S.C. 281)

3. Military Appropriation Act of 1941, Act of June 13, 1940, 54 Stat. 350, 355:

> "* * * No payment shall be made from money appropriated in this Act to any officer on the retired list of the Army who for himself or for others is engaged in the selling of, contracting for the sale of, or negotiating for the sale of, to the Army, or the War Department any war materials or supplies. * * *"

4. Act of July 22, 1935, 49 Stat. 487, 490, amending Act of June 10, 1896 (29 Stat. 361):

> "* * * That no payment shall be made from appropriations made by Congress to any retired officer in the Navy or Marine Corps who for himself or for others is engaged in the selling of, contracting for the sale of, or negotiating for the sale of, to the Navy or the Navy Department any naval supplies or war material."

May 17, 1963
Number 5500.7
GC,DoD

DEPARTMENT OF DEFENSE DIRECTIVE

Subject

Standards of Conduct

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XIII. CONFLICT OF INTERESTS LAWS

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C. *Former Officers or Employees*

1. ***Definition.*** The term "former officer or employee" includes those full-time civilian officers or employees who have left Government service, special Government employees who have left Government service, retired regular officers and reserve officers released from active duty. It does not include enlisted personnel.

2. *Prohibited Activities.* Inclosure 3 B contains a more detailed discussion of the criminal law. In general, a former officer or employee is subject to the following major prohibitions:

a. He may not, at any time after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (See 18 U.S.C. 207(a)).

b. He may not, for one year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which are within the boundaries of his official responsibility during the last year of his Government Service (See 18 U.S.C. 202(b) and 207(b)). This temporary restraint, of course, gives way to the permanent restriction described in paragraph *a.*, if the matter is one in which he participated personally and substantially.

D. *Retired Regular Officers*

1. *Prohibitions.* Inclosure 3 C contains a summary of the laws applicable to retired regular officers. In general, a retired regular officer is subject to the following major prohibitions:

a. As an officer whose "employment has ceased," he may not engage in the prohibited activities listed in Paragraph C above (See 18 U.S.C. 207).

b. He may not, at any time, assist in prosecuting a claim against the United States if he worked on that claim while on active duty (See 18 U.S.C. 283).

c. He may not, within two years after his retirement, assist in prosecuting a claim which involves the department in whose service he holds a retired status (See 18 U.S.C. 283).

d. He may not at any time, sell anything to the department in whose service he holds a retired status (See 18 U.S.C. 281).

e. He may not, within three years after retirement, sell supplies or war materials to any agency of the DoD, the Coast Guard, the Coast and Geodetic Survey, or the Public Health Service (See 37 U.S.C. 801(c), as amended October 9, 1962, P.L. 87-777, formerly 5 U.S.C. 59(c)). (See definition of "Selling", page 7, Inclosure 3).

2. *Required Statement of Employment.*

a. Each regular retired officer of the armed forces shall file with the Military Department in which he holds a retired status a Statement of Employment (DD Form 1357). Each regular officer retiring hereafter shall file this Statement within thirty days after retirement. Whenever the information in the statement is no longer accurate, each such officer shall file a new DD Form 1357, (Inclosure 6).

b. The Military Departments shall appropriately review the Statements of Employment to assure compliance with applicable statutes and regulations.

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(Incl. 3-C)

SUMMARY OF LAWS APPLICABLE TO RETIRED REGULAR OFFICERS NOT ON ACTIVE DUTY

I. Prohibited Activities.

A. *Matters Connected With Former Duties or Official Responsibilities.* A retired regular officer not on active duty is considered to be a "former officer" for the purposes of 18 U.S.C. 207 and therefore, the prohibitions discussed in paragraph XIII C and Inclosure 3B apply to him.

B. *Claims.* A retired regular officer of the armed forces may not, within two years of his retirement, act as agent or attorney for prosecuting any claim against the Govern-

ment, or assist in the prosecution of such a claim or receive any gratuity or any share of or interest in such claim in consideration for having assisted in the prosecution of such a claim, if such claim involves the department in whose service he holds a retired status. Nor may a regular retired officer at any time act as an agent or attorney for prosecuting any claim against the Government or assist in prosecution of such claim, or receive any gratuity or any share of or interest in such a claim in consideration for having assisted in the prosecution of such claim, if such claim involves any subject matter with which he was directly connected while on active duty (See 18 U.S.C. 283).

C. *Selling*

1. A retired regular officer is prohibited, at all times, from receiving or agreeing to receive any compensation for representing any person in the sale of anything to the Government through the department in whose service he holds a retired status (See 18 U.S.C. 281).

2. 37 U.S.C. 801(c) as amended October 9, 1962, P. L. 87-777, formerly 5 U.S.C. 59(c) provides:

"No payment shall be made from appropriations in any Act to any officer on the retired lists of the Regular Army, Regular Navy, Regular Marine Corps, Regular Air Force, Regular Coast Guard, Coast and Geodetic Survey, and Public Health Service for a period of *three* years after retirement who for himself or for others is engaged in the selling of or contracting for the sale of or negotiating for the sale of to any agency of the Department of Defense, the Coast Guard, the Coast and Geodetic Survey, and the Public Health Service any supplies or war materials."

For the purpose of this statute, "selling" means:

a. Signing a bid, proposal, or contract;

b. Negotiating a contract;

c. Contacting an officer or employee of any of the foregoing departments or agencies for the purpose of:

(1) Obtaining or negotiating contracts,

(2) Negotiating or discussing changes in specifications, price, cost allowances, or other terms of a contract, or

(3) Settling disputes concerning performance of a contract, or

d. Any other liason activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person.

However, it is not the intent of this Directive to preclude a retired regular officer from accepting employment with private industry solely because his employer is a contractor with the Government.

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STATEMENT OF EMPLOYMENT
(Regular Retired Officers)

1. I am a regular retired officer of the .....,
(Department)

and was retired on .....
(Date)

2. I ☐ am ☐ am not employed. *(If employed, or self employed, complete the rest of this item; if more than one employer, list complete information for each employer on a separate sheet).*

a. My employers name and address is

b. My employer sells, or offers for sale, to agencies *(including nonappropriated fund activities)* of the Department of Defense, the Coast Guard, the Coast and Geodetic Survey, or the Public Health Service the following types of products or services:

c. My position title is

d. My duties are, briefly *(a complete description of your job, a copy of your employment contract, or any other pertinent information, may be attached):*

e. My duties do not involve selling to the Government in violation of the statutes and policies cited in the regulation received.

3. I have received a copy of DOD Directive 5500.7, or the regulation issued by my department implementing that Directive.

4. I will promptly file a new Statement of Employment whenever the information in this Statement is no longer accurate.

....
Signature Date

....
Name *(Typed or Printed)* File/Service Number

Previous Edition of This Form Is Obsolete.

Form
DD 1 May 63 1357